

Jesus Tina,
Rosario Tina, Pro se
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United States District Court
~~IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA~~
~~COUNTY OF SAN DIEGO~~

Southern District of San Diego

JESUS TINA,

Case No.:

'08 CV 1167 JM NLS

ROSARIO TINA, Pro se

Plaintiffs

**DECLARATION OF IN SUPPORT OF EX
PARTE APPLICATION FOR TEMPORARY
RESTRAINING ORDER/PRELIMINARY
INJUNCTION AND ORDER TO SHOW
CAUSE**

vs.

HOME CAPITAL FUNDING, AMERICAN
HERITAGE FINANCIAL, COUNTRYWIDE
HOME LOANS, WELLS FARGO BANK
DBA AMERICA'S SERVICING
COMPANY, RICARDO FARIAS and
MARIA FARIAS,

Defendant(s),

Plaintiffs, JESUS TINA, & Rosario Tina, file this, their
Declaration under oath and under penalty of perjury, in support
of their Application for Temporary Restraining Order/Preliminary
Injunction and Order to Show Cause, and states as follows:

1. Plaintiffs, on or about September 16, 2005
participated in a purported Mortgage loan closing with
Defendants.

2. At that time, all Defendants represented to Plaintiffs
that the bedroom which had been converted from a garage, had
been properly permitted and constructed.

1 3. In fact, said representations were false, and Defendants
2 knew, or should have known, that said representations were
3 false.

4 4. As a result of the fraudulent misrepresentations of
5 Defendants, Plaintiffs was advised by the City of San Diego that
6 the unpermitted bedroom conversion would have to be demolished,
7 that Plaintiffs must vacate the premises and is not permitted to
8 rent or lease the premises.

9 5. Plaintiffs further believes that their payments have been
10 misapplied. Plaintiffs believes that some of the misapplication
11 of their mortgage payments include, but are not necessarily
12 limited to, incorrect interest rate adjustments, incorrect tax
13 impound accounts, misapplied payments, misapplied escrow
14 payments, misapplied insurance payments and other misapplied
15 payments.

16 6. Defendants are seeking and attempting a non-judicial
17 Trustee's Sale of the subject property without any judicial
18 oversight whatsoever.

19 7. Plaintiffs believes that said attempted non-judicial
20 foreclosure and Trustee's Sale is wrongful. Not only have
21 Defendants been guilty of fraud, but Plaintiff's payments been
22 misapplied, but Plaintiffs has not received proper notices or
23 proper accountings. Plaintiffs believes that Defendants have
24 violated the provisions of California law and that the actions
25 of Defendants are wrongful. However, it is difficult for
26 Plaintiffs to determine exactly all of the violations of
27 Defendants without proper accountings and without a production
28 of all of the records and documents pertaining to Plaintiff's

1 account, including the original note signed by Plaintiffs, as
2 well as other records.

3 8. Further, Plaintiffs is unsure at this time exactly which
4 Defendant is in fact the true owner and holder of the subject
5 promissory note entitled to receive payment. Plaintiffs requests
6 that Defendants produce the original signed and dated promissory
7 note with an original signature, along with any attachments
8 thereto to ascertain the true owner and holder of the note in
9 question.

10 9. Plaintiffs believes that due to the imminent threat of a
11 Trustee's foreclosure sale, that they will suffer irreparable
12 injury and damage if the threatened sale is not enjoined and
13 restrained pending a determination of Plaintiff's claims.

14 10. This Declaration is filed based upon Plaintiff's
15 personal knowledge of the facts and allegations set forth in
16 Plaintiff's application for ex parte application for temporary
17 restraining order and preliminary injunction and order to show
18 cause, and is made for the purposes as expressed in said
19 application and not for any purpose of delay, and is made in
20 good faith.

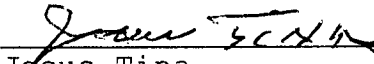
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23 STATE OF CALIFORNIA
24 COUNTY OF SAN DIEGO
25

26 BEFORE ME, the undersigned authority, personally appeared
27 Jesus Tina, & Rosario Tina, who after being duly sworn, depose
28 and say that they have read the foregoing Declaration, and that

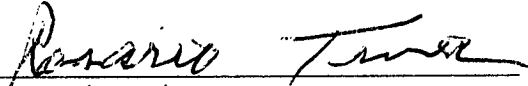
under penalty of perjury, that the facts and allegations set forth in said Declaration are true and correct.

SWORN TO AND SUBSCRIBED this 30 day of June, 2008.


Signature NOTARY PUBLIC,
STATE OF CALIFORNIA


Jesus Tina,

My commission expires:
NOTARY PUBLIC,


Rosario Tina,
Plaintiffs/ Affiants,

Notary seal

